SECK SIEW NYGT & ANOR

v.

FIRENT MANAGEMENT SEVICES SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ABDUL WAHAB PATAIL J
[CIVIL SUIT NO: D4-22-699-1993]
28 JUNE 2006

COMPANY LAW: *Shares - Transfer of shares - Fraud - Whether plaintiffs' signatures for transfer of shares fraudulently forged - Standard of proof - Locus standi - Whether plaintiffs legitimate and beneficial shareholders*

The plaintiffs, by this action, sought a declaration that they were the legitimate and beneficial shareholders of the first defendant company, rectification of the register of the members of the first defendant company and damages for loss suffered as a result of the acts of the first, second and third defendants. The plaintiffs claimed that they were surprised to discover from the annual return filed with the Registrar of Companies that their shares had been transferred to the second defendant without their knowledge. They submitted that they had never signed any transfer and that the second defendant had fraudulently forged their signatures. The second defendant, the director of the first and third defendants, asserted that the plaintiffs had no *locus standi* as they were not the beneficial owners but held the shares for one Johnny Yong Ah Leong ('Johnny'). He alleged in his defence that the plaintiffs never took an active role in the first defendant and that all actions relating to the first defendant were conducted by Johnny, who would obtain their signatures when necessary. He also contended that the transfer of shares in the first defendant was known and agreed to by Johnny and the plaintiffs.

Held (dismissing the plaintiffs' action):

(1) While the first plaintiff came to court to testify that the signature on the share transfer was not hers, the second plaintiff, her brother-in-law, did not. There was only the testimony of the first plaintiff, supported by her husband, that she did not sign the share transfer. Their allegation that the signature was a fraudulent forgery was denied by the defendants, and there was no other evidence to show that

A the signature was not hers. It is established law that fraud, such as fraudulently forging a signature upon a transfer, requires a higher standard of proof than the ordinary civil standard of proof upon a balance of probabilities. The *locus standi* defence was without merit as the shares were plainly in
B the names of the plaintiffs at the material time and it was not disputed that Johnny would obtain their signatures whenever they were needed. In all the circumstances and considering the facts of this case, the plaintiffs had failed to prove its case upon a balance of probabilities that the second defendant had
C fraudulently forged the share transfers. (paras 8, 12 & 15)

[Each party to bear own costs.]

For the plaintiffs - Jaspal Singh; M/s Jaspal Singh & Mohd Shah
For the defendants - Rachel Suppiah; M/s Abdullah Ooi & Chan
D

Reported by Suresh Nathan

JUDGMENT

E

Abdul Wahab Patail J:

[1] By this action the plaintiffs Seck Siew Nygt and Yong Sin Huat originally sought:

F (a) a declaration that they are the legitimate and beneficial shareholders of the first defendant company;

(b) rectification of the register of the members of the first defendant company;

G (c) damages for loss suffered from the acts of the first, second and third defendants;

(d) costs; and

H (e) such other and further relief as the court thinks fit.

[2] The plaintiffs Seck Siew Nygt and Yong Sin Huat claim they were the lawful beneficial owners of one share each in the first defendant Firent Management Services Sdn. Bhd. The remaining
I two shares were held by the second defendant Abu Fatah Sanusi bin Mohd Ambia.

[3] The plaintiffs claim that not long before they filed their claim on 2 July 1993, they were surprised to discover from the annual return filed with the Registrar of Companies that their shares had been transferred to the second defendant without their knowledge. They say they never signed any transfer. They allege that the second defendant had fraudulently forged their signatures.

[4] The first witness for the plaintiffs was the first plaintiff herself. It is obvious from the evidence for the plaintiffs that she had little operative knowledge of the transactions since she relied upon her husband, Johnny Yong Ah Leong, who was called as the second witness for the plaintiffs.

[5] Johnny Yong Ah Leong testified that the plaintiffs were originally installed as directors on 7 August 1987 with the second defendant, but they resigned on 18 July 1989. On that date, Johnny Yong Ah Leong himself became a director to facilitate easy signing of resolutions.

[6] In support of the plaintiffs' case that they had never transferred nor agreed to transfer their shares to the second defendant, he testified that sometime in mid 1989 the Company Secretary requested him to bring the plaintiffs to sign some documents. He and the first plaintiff went to see the Company Secretary. The second plaintiff did not as he was away. But when they found that they were to sign a transfer of their shares to the second defendant, he refused to allow them to sign and he asked the Company Secretary to surrender the original share certificates to them.

[7] This, however, is inconsistent with the fact Johnny Yong Ah Leong proceeding on 18 July 1989 to sign the resolution approving the transfer of shares from the plaintiffs to the second defendant. He sought to explain this by saying he trusted the second defendant and would sign without question. But the explanation sounds hollow and lame in the light of the alleged surprise at being asked to transfer their shares sometime in mid 1989, and the alleged emphatic refusal by demanding the handing over of the share certificates.

[8] There then remains the question how the share transfers were in fact signed. While the first plaintiff came to court to testify that the signature on the share transfer was not hers, the second plaintiff, her brother-in-law did not. There is only the testimony of the first plaintiff, supported by her husband, that she did not sign.

They allege that the signature is a fraudulent forgery. This is denied by the defendants. There is no other evidence to show that the signature was not hers. Now it is established law that fraud, such as fraudulently forging a signature upon a transfer, requires a higher standard of proof than the ordinary civil standard of proof upon a balance of probabilities.

[9] Then again, the Directors' Resolution was signed by Johnny Yong Ah Leong on 18 July 1989. Without it the transfer could not have been made as he and the second defendant were the only directors of the first defendant at the time. The inconsistency of refusing in mid 1989 to allow his wife to sign the alleged transfer with allegedly trusting the second defendant so much as to simply sign documents put before him leaves any reasonable person with the inescapable view there is likely more he is not telling. There is no satisfactory explanation why only just before the filing of the suit did they seek to find out what was happening with the company. Indeed he himself avoided further probe by saying it was his mistake, even though that does not explain why the signatures of both plaintiffs could be on their respective transfers to the second defendant. I find his testimony unsatisfactory and unconvincing.

[10] The second defendant in his defence admitted he was the director of the first and the third defendants until January 1993. However, he asserts the plaintiffs have no *locus standi* as they are not the beneficial owners of the shares, but held the shares for one Johnny Yong Ah Leong. He asserted in his defence that the plaintiffs never took an active role in the first defendant and all actions relating to the first defendant was conducted by Johnny Yong Ah Leong, who would obtain their signatures where necessary. He asserted specifically that the transfer of shares in the first defendant was known and agreed to by Johnny Yong Ah Leong and the plaintiffs.

[11] The second defendant relied upon the above defence in reply to the prayer for declaration that the plaintiffs were and are still the legitimate and beneficial shareholders of their two shares. In reply to the prayer for rectification, he stated the share had been sold to the third defendant by an agreement dated 19 March 1990. In reply to the prayer for damages, he stated that the transfer did not involve money save for the face value of the shares totalling RM4.

[12] The *locus standi* defence is without merit as the shares were plainly in the names of the plaintiffs at the material time. It was not disputed that Johnny Yong Ah Leong would obtain the signatures of the plaintiffs whenever they were needed.

[13] The defence that the transfer to the third defendant did not involve money save for the RM4 being the face value of the four shares is not only a superficial answer but also betrays a certain facetiousness. The claim for damages requires an accounting of the value of the 2 shares, as opposed to the price paid. The first defendant had obtained a radio trunking network licence. It was not disputed it is of some value. The third defendant itself was later acquired by Celcom and is now known as Celcom Trunk Radio (M) Sdn. Bhd.

[14] The testimony of Cik Suryani binti Hussein (PW3) that Explorasia Sdn. Bhd. transferred its shares in the third defendant to Alpine Resources Sdn. Bhd. for RM150,000 was not challenged and is indicative of the value of the first defendant company. But that evidence, put on record by the plaintiffs was in respect of a transaction of sale of 5,000 shares approved by the Board of Directors on 15 January 1993 and the form of transfer was signed, sealed and delivered on 31 March 1993.

[15] In all the circumstances, I find that the plaintiffs have failed to prove its case upon a balance of probabilities that the second defendant had fraudulently forged the share transfers. I, therefore, dismiss the plaintiffs' action. The conduct of the defence, however, made the case more convoluted than necessary. In the circumstances, I would order each party bear their own costs.